

United States District Courts  
Southern District of New York

12/20/2016

Rafael A. Jones,  
Plaintiff,

vs.

CASE NO# L16-CV-00556 (A.J.N.)  
(GW6)

State of New York et al.,

Defendants,

Joinder of Claim

Rule 16 Fed.R.Civ.P.

Plaintiff-Petitioner Motion in Objection to Both  
The Defendants Attorney's Claim of Failure to State  
Cause of Action Citing § 28 U.S.C. § 2111 Harmless  
Error when it Comes to Statutory Protections of  
Our Fourth & Fifth Amendment Constitutional  
Protections

Wherefore Plaintiff-Petitioner states these mitigat-  
ing Facts for these Honorable Courts;

- #1) *Dowling v. United States* 493, U.S. 342, 352 (1990)  
The Bill of Rights speaks in explicit terms to  
many aspects of Criminal procedure, and the expan-  
sion of those Constitutional guarantees under the  
open-ended rubric of the "Due Process Clause", invites  
undue interference with Both Considered legislative  
judgements and a careful Balance that the Con-  
stitution strikes Between liberty and order!

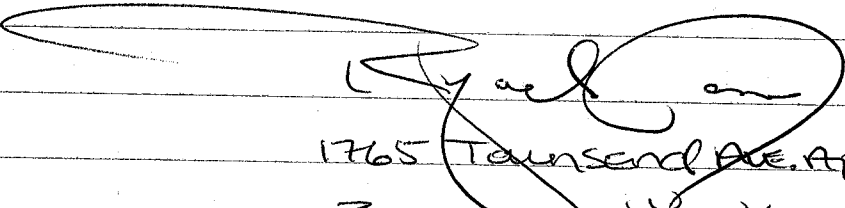
- \* 2) SEE: *PAYNE V. ARKANSAS*, 356 U.S. 560 (1958) which states that Petitioner-Plaintiff are entitled to a trial "FREE FROM THE PRESSURE OF UNCONSTITUTIONAL INFERENCES."
- \* 3) SEE: DANIEL MELTER *ERROR AND CONSTITUTIONAL REMEDIES*, 61 U. CHI. L. REV. 1, (1994) HARMLESS ERROR RULE EXISTS EVERYWHERE FOR ALL KINDS OF ERRORS.
- (A). THE RULE IN THIS CONTEXT BALANCES THE DESIRABILITY OF DETERRING OBJECTIONABLE POLICE CONDUCT AGAINST THE UNDESIRABILITY OF EXCLUDING RELEVANT AND RELIABLE EVIDENCE.
- (B). THE RESOLUTION OF THE FOURTH AND FIFTH AMENDMENTS VALUES WITH INTEREST OF JUDICIAL ECONOMY MIGHT WELL DICTATE A HARMLESS ERROR RULE. (NO CONSTITUTIONAL ERROR).
- \* 4) SEE: *Fahy v. Connecticut*, 375 U.S. 85 (1963). THE QUESTION FOR THESE HONORABLE COURTS IS WHETHER MY NOT STATING CAUSE OF ACTION ON THIS CLAIM OR MY EVIDENCE WOULD CONTRIBUTE TO THE CONVICTION. "Id" 356 U.S. 560 (1958).
- \* 5) SEE: ATTACHED THREE PAGE COURT ORDER INDEX NUMBER 530065-2016.

Respectfully Submitted  
Rafael A. Jones

§ 28 U.S.C. § 1746

Certification of Service

I certify that all statements on foregoing documents is true to the best of my knowledge under the penalties of perjury this 20th day of December 2016.

  
1765 Townsend Ave. Apt. 5H  
Brooklyn, New York 10453  
(646) 248-9580

1  
2 SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY : CIVIL TERM

3 -----  
4 IN THE MATTER OF THE APPLICATION FOR  
5 RELEASE BY RAFAEL JONES, FROM BELLEVUE  
HOSPITAL CENTER, PURSUANT TO  
MENTAL HYGIENE LAW 9.39  
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INDEX #  
530065-2016

6 DECISION PORTION ONLY

7 JANUARY 19, 2016

8 BELLEVUE HOSPITAL  
9 NEW YORK, NEW YORK

10 B E F O R E:

11 HON. SHLOMO S. HAGLER, JUSTICE

12 A P P E A R A N C E S:

13  
14 NYC HEALTH & HOSPITAL CORPORATION  
Attorney for Bellevue Hospital  
15 BY: DAVID BALTCH, ESQ.

16  
17 MENTAL HYGIENE LEGAL SERVICES  
Attorney for Respondent  
18 BY: JILLIAN BECKER, ESQ.  
19  
20  
21  
22  
23

24 Vincent Viti  
25 Senior Court Reporter  
26

## DECISION OF THE COURT

THE COURT: After a hearing this Court makes its findings of facts and conclusions of law based upon clear and convincing evidence. I will repeat that the standard is clear and convincing evidence. As I indicated previously, it is important for the Court to hear the patient. I can generally detect the circumstances when I hear the patient. This patient testified intelligently, clearly, and directly. Unfortunately, the doctor does not have firsthand knowledge of what transpired. In all accounts it is not his fault. He was just selected to be the doctor for this patient. Initially, upon cross-examination, the doctor testified that the patient was not a substantial risk of physical harm due to his violent behavior. Upon redirect he changed his testimony indicating that there was a potential risk of physical harm due to violent behavior. The hospital has not met its burden. There is no indication as permitted that there has been any conduct on the ward that would give rise to a substantial risk of physical harm due to violent behavior or suicidal ideation or homicidal ideation. The hospital has not met its burden. Therefore, this Court is granting the application, but will stay is forty-eight hours for the hospital to make sure that he has a proper discharge plan.

MS. BECKER: Judge, if they have not met their burden and I understand that it is cold out, but twenty-four

DECISION OF THE COURT

hours is enough. He has a place to return to.

THE COURT: Is twenty-four hours enough?

THE WITNESS: Yes.

THE COURT: Based upon the doctor's testimony, I will make it twenty-four hours. I wanted to make sure we had a proper discharge plan. I didn't want him to go and get in a worse situation.

\* \* \* \* \*

(Whereupon, at this time, the proceedings were concluded)

C E R T I F I C A T E

I do hereby certify that the foregoing taken at the time and place aforesaid, is a true and correct transcription of my shorthand notes.



VINCENT VITI  
SENIOR COURT REPORTER

RAFAEL A. JONES  
1765 Townsend Ave Apt 5 H  
Bronx, New York 10453-7688

Pro Se GP

9-22-16

United States District Courts

USMP  
SDNY

Southern District of New York  
500 Pearl Street  
New York, NY 10007-1312

10007-1312

